

**Charter Commission
Public Safety Work Group
([LIMS File CH2020-00015](#))**

Regular Meeting
November 2, 2020 – 4:30 p.m.
Online Meeting

Commission Members: Andrea Rubenstein (Co-Chair), Toni Newborn (Co-Chair), Barry Clegg (Ex-Officio), Andy Kozak, Matt Perry, Jan Sandberg, Lyall Schwarzkopf (Quorum 4)

Staff: Casey Carl, 612-673-2216

Call to Order

Discussion

1. Receiving the Chair's Report.
2. Considering draft substitutes to the proposed charter amendment.
 1. Draft substitute by Commissioner Abbot.
[Transmittal letter Commissioner Abbott](#)
[Draft substitute amendment Commissioner Abbott](#)
 2. Draft substitute by Commissioner Clegg.
[Transmittal letter Commissioner Clegg](#)
[Draft substitute amendment Commissioner Clegg](#)
3. Discussing recommendation to the Charter Commission regarding the City Council's proposed Charter amendment related to community safety and violence prevention.
4. Discussing next steps for the Public Safety Work Group.

Adjournment

Clerk Notes: The public may join the meeting by dialing (612) 276-6670 and using conference ID: 555 205 187#

Notice: Members may participate remotely by telephone or other electronic means due to the local public health emergency (novel coronavirus pandemic) declared on March 16, 2020, pursuant to the provisions of MN Statutes Section 13D.021. A portion of this meeting may be closed to the public pursuant to MN Statutes Section 13D.03 or 13D.05.

Next Public Safety Work Group meeting: TBA

For reasonable accommodations or alternative formats please contact the City Clerk's Office at 612-673-2216 or e-mail CityClerk@minneapolismn.gov. People who are deaf or hard of hearing can use a relay service to call 311 at 612-673-3000. TTY users call 612-673-2157 or 612-673-2626. Para asistencia 612-673-2700 - Rau kev pab 612-673-2800 - Hadii aad Caawimaad u baahantahay 612-673-3500.

GREGORY A. ABBOTT

P.O. Box 24443
Minneapolis, Minnesota 55424

(612) 217-2440

OCTOBER 27, 2020

Casey Joe Carl
CITY CLERK
CITY OF MINNEAPOLIS
350 South Fifth St., Room 304
Minneapolis, MN 55415

Via email (Casey.Carl@minneapolismn.gov)

RE: **Proposed Substitute Charter Amendment**
MINNEAPOLIS CHARTER COMMISSION
Item CH2020-00014

Dear Mr. Carl:

At the direction of the chairs of the Public Safety Work Group, who directed that any proposed substitutes to the proposed City Council Charter amendment be submitted for their consideration at this time, I hereby submit to you my proposed substitute amendment for the MPD Charter Amendment Articles VII and VIII, item CH2020-00014.

This transmittal letter and the proposed substitute are sent via email, as PDF documents. If submission of hard copy is necessary, please let me know promptly and I will provide it.

Sincerely,

/s/

Gregory A. Abbott

c: Toni Newborn, Co-Chair, Public Safety Work Group (via email, w/ enclosure)
Andrea Rubenstein, Public Safety Work Group
Barry Clegg, Charter Comm. Chair

CHARTER AMENDMENT

Substitute Proposed by Commissioner Abbott

Amending Article VII of the City Charter relating to Administration and Article VIII of the City Charter relating to Officers and Other Employees, pertaining to the creation of a new Charter Department to replace the Police Department with a new department for public safety and prevention of violence.

Section 1. That Article VII, Section 7.2(a) of the Minneapolis City Charter be amended to read as follows:

§ 7.2. Departments.

(a) **The departments generally.** The City Council must establish, organize, and otherwise provide for these departments:

- (1) a City Coordinator;
- (2) a City Clerk (section 4.2(e));
- (3) a City Assessor;
- (4) a City Finance Officer and budget office, including a director;
- (5) a City Attorney and legal department;
- (6) a civil rights department, including a director, and a civil rights commission (section 7.2(d));
- (7) a department of community planning and economic development;
- (8) a fire department (section 7.4);
- (9) a health department, headed by a health commissioner;
- (10) a planning commission (section 7.2(e));
- (11) ~~a police department~~ a department responsible for public safety and prevention of violence (section 7.3);
- (12) a public-works department;
- (13) a purchasing department;
- (14) a regulatory-services department; and
- (15) any other department necessary or convenient for the efficient delivery of municipal services.

Section 2. That Article VII, Section 7.3 of the Minneapolis City Charter be amended to read as follows:

§ 7.3. Police Public Safety and Prevention of Violence.

(a) ~~**Police department.**~~ The Mayor has complete power over the establishment, maintenance, and command of the police department. The Mayor may make all rules and regulations and may promulgate and enforce general and special orders necessary to operating the police department. Except where the law vests an appointment in the department itself, the Mayor appoints and may discipline or discharge any employee in the department (subject to the Civil Service Commission's rules, in the case of an employee in the classified service).

- (1) ~~**Police chief.**~~

- (A) **Appointment.** The Mayor nominates and the City Council appoints a police chief under section 8.4(b). (B) **Term.** The chief's term is three years.
- (C) **Civil service.** The chief serves in the unclassified service, but with the same employee benefits (except as to hiring and removal) as an officer in the classified service. If a chief is appointed from the classified service, then he or she is treated as taking a leave of absence while serving as chief, after which he or she is entitled to return to his or her permanent grade in the classified service. If no vacancy is available in that grade, then the least senior employee so classified returns to his or her grade before being so classified.
- (D) **Public health.** The chief must execute the City Council's orders relating to the preservation of health.

(2) **Police officers.** Each peace officer appointed in the police department must be licensed as required by law. Each such licensed officer may exercise any lawful power that a peace officer enjoys at common law or by general or special law, and may execute a warrant anywhere in the county.

- (b) **Temporary police.** The Mayor may, in case of riot or other emergency, appoint any necessary temporary police officer for up to one week. Each such officer must be a licensed peace officer.
- (c) **Funding.** The City Council must fund a police force of at least 0.0017 employees per resident, and provide for those employees' compensation, for which purpose it may tax the taxable property in the City up to 0.3 percent of its value annually. This tax is in addition to any other tax, and not subject to the maximum set under section 9.3(a)(4).

(a) **Department to Maintain Public Safety and Prevent Violence.** The City Council must establish a department of city government to preserve and maintain public safety and to prevent violence prioritizing a holistic, public health-oriented approach. The City Council shall maintain and adequately fund the department, and shall consistently engage the public about funding, rules, operation, and structure of the department.

(1) **Legislative Authority.** All legislative authority with respect to the department shall be exercised exclusively by the Council, including establishment of the name of the department, its mission statement, its funding, rules of operation, personnel policies, size, and scope. The powers of the City Council with respect to the department shall be exercised solely through ordinances enacted pursuant to section 4.4 of this Charter.

(2) **Executive Authority.** All executive and administrative authority with respect to the department shall be exercised exclusively by the Mayor, including day-to-day operations, personnel policies, enforcement of discipline and termination of employees, and responses to specific incidents or specific threats to public safety. In the exercise of executive or administrative powers, the Mayor must faithfully execute and abide by the policies, rules, and regulations as established by the City Council.

(3) **Director of the Department.** The Mayor nominates and the City Council appoints a director of the department under section 8.4(b). The City Council may establish minimum standards for qualifications or experience for the position of director.

(b) **Division of Law Enforcement Services.** The Council may establish a division of law enforcement services, composed of licensed peace officers, inside the department. The division of law enforcement services shall be subject to the supervision of the Mayor pursuant to section 7.3(a)(2) of this Charter.

Section 3. That Article VII, Section 7.4 of the Minneapolis City Charter be amended to read as follows:

§ 7.4. - Fire.

(a) Fire department.

(1) Fire chief.

(A) **Appointment.** The Mayor nominates and the City Council appoints a fire chief under section 8.4(b).

(B) **Civil service.** The chief serves in the unclassified service, but with the same employee benefits (except as to hiring and discharge) as an officer in the classified service. If a chief is appointed from the classified service, then he or she is treated as taking a leave of absence while serving as chief, after which he or she is entitled to return to his or her permanent grade in the classified service. If no vacancy is available in that grade, then the least senior employee so classified returns to his or her grade before being so classified.

(2) Senior management.

(A) **Senior managers.** The department's senior managers are those holding the titles (which may be held by one or more employees)—

(i) assistant chief,

(ii) deputy chief,

(iii) fire marshal,

(iv) assistant chief of training, or (v) engineering officer.

(B) **Appointment.** The fire chief appoints, with the City Council's assent, without examination, a senior manager from the department's firefighters with the rank of captain or higher; and may discharge him or her at will, without regard to the Civil Service Commission's rules. An officer who accepts such an appointment is treated as taking a leave of absence, retains his or her grade and seniority in the classified service, and earns seniority in that grade while serving as a senior manager, after which he or she is entitled to return to his or her permanent grade in the classified service. If no vacancy is available in that grade, then the least senior employee so classified returns to his or her grade before being so classified.

(3) Officers and staff.

(A) **Appointment.** The fire chief, with the City Council's assent, appoints (subject to the Civil Service Commission's rules) the department's other officers and other employees.

(B) **Layoffs.** The fire chief may (subject to the Civil Service Commission's rules) discharge an employee in the City's interest. If the City Council directs that the department reduce its force, then the chief must recommend only such layoffs as will not impair the department's operations.

(b) **Fire marshal.** The fire marshal must take care that all laws and ordinances against danger from fire are faithfully observed and enforced, for which purpose the marshal may enter and inspect any building (including a dwelling) at any reasonable time. The marshal must examine and record the cause of any fire.

(c) **Fire police.** The City Council may provide for fire police within either the fire department or the police department. The fire department may command the police officers at any fire.

(d ~~c~~) **Fire emergencies.** If necessary for the protection of life or property from an unusual fire, a riot, or a like emergency, the fire chief may—

- (1) compel the attendance of any employee in the fire department (including an off-duty firefighter), for which purpose the chief may make any necessary or prudent rule; and
- (2) appoint additional officers or other firefighters for temporary service during the emergency, without regard to the Civil Service Commission's rules.

(e ~~d~~) **Funding.** The City Council must fund a fire department that can maintain adequate staffing.

(1) **Operating expenses.** The department's operating expenses are paid out of the general fund.

(2) **Capital expenses.** The department's capital expenses are paid out of the permanent-improvement fund, or the proceeds from bonds issued for the purpose, or out of the general fund.

Section 4. That Article VIII, Section 8.2(d) of the Minneapolis City Charter be amended to read as follows:

§ 8.2. – Officers generally.

(d) **Tenure.** Each officer takes office, after having qualified and taking the required oath—

- (1) in the case of an elected officer other than a Council member, elected in a regular election, on the first weekday in January that is not a holiday in the calendar year next following the election;
- (2) in the case of Council members, elected in a regular election, on the first Monday in January in the calendar year next following the election;
- (3) in the case of an elected officer elected at a special election, when the results are certified;
- (4) in the case of an officer appointed under section 8.4(b), ~~other than the police chief~~, on the first weekday in January that is not a holiday in an even-numbered year; and
- (5) ~~in the case of the police chief, on the first weekday in January that is not a holiday in the year the appointment starts; and~~
- (6~~5~~) in the case of any other office, as any applicable ordinance provides, otherwise upon election or appointment.

Section 5. That Article VIII, Section 8.4(b) of the Minneapolis City Charter be amended to read as follows:

§ 8.4. – Other officers.

(b) **Appointment by Mayor or Council.** Where a general law, special law, ordinance, rule, or other authority provides for an officer's appointment by the Mayor, by the City Council, by any board or commission whose membership mostly consists of Council members, or by any combination of them, and does not explicitly override this section 8.4(b), then the appointment is vested collectively in the Mayor, Executive Committee, and Council as this section provides. The Council may prescribe the Executive Committee's process, and may require consultation with any interested Council committee or member, but may not limit the candidates that the Mayor may nominate or the Committee may review. This section 8.4(b) does not apply to any appointment for which another provision within this charter provides unless the other provision explicitly refers to this section.

(1) **Nomination by Mayor.** The Mayor enjoys the exclusive power of nominating the officer in the first instance. (2) **Recommendation by Executive Committee.** The Executive Committee must review the Mayor's nomination, which it may forward to the City Council with a recommendation that the candidate be appointed. (3) **Appointment by City Council.** The City Council may appoint a candidate that the Executive Committee has recommended. The Council may not appoint a candidate that the Executive Committee has not recommended. (4) **Failure of appointment.** If an office has been vacant for at least 90 days ~~(or 30 days in the case of the police chief)~~, or if the Mayor has nominated three candidates that the Executive Committee or the Council has rejected, then the Executive Committee may by a majority of its membership name three or more candidates, from whom the Mayor must nominate one. If the Mayor has not, after 20 days, nominated a candidate so named, then the Executive Committee may by a majority of its membership recommend one such candidate to the Council, and the Council may appoint the recommended candidate, without the Mayor's nomination. This process recurs until an officer is appointed.

(5) **Suspension.** The Executive Committee may suspend without pay any officer appointed under this section

8.4(b). Any such suspension expires after five days unless the City Council extends it.

(6) **Removal.** The City Council may not remove an officer appointed under this section 8.4(b) unless the Executive Committee so recommends, and may not remove a Civil Service Commissioner except for cause.

(7) **Holding over.** Any officer subject to appointment under this section 8.4(b) whose term has expired but whose successor has not been appointed may continue in office for up to 180 days. The Executive Committee may thereafter appoint a temporary successor for up to 90 days. The office is otherwise vacant until a successor is appointed and qualifies.

Section 6.

Proposed Title and Question to be Presented to Voters at the Next General Election:

“Public Safety and Prevention of Violence

Shall the Minneapolis City Charter be amended to replace the Police Department with a new department responsible for public safety and prevention of violence.

Yes _____

No _____”

MEMORANDUM IN SUPPORT OF PROPOSED SUBSTITUTE CHARTER AMENDMENT

TO: Minneapolis Charter Commission Public Safety Work Group

FROM: Barry Clegg 

CC: Minneapolis Charter Commissioners, Casey Carl, City Clerk

DATE: October 29, 2020

RE: Clegg Proposed Substitute Charter Amendment

1. Background.

On June 26, 2020, the Minneapolis City Council proposed an amendment (the "Council Amendment") to the Minneapolis City Charter relating to public safety that (i) eliminated the minimum funding and staffing requirements for the police department set forth in Section 7.3(c) of the Charter; (ii) eliminated the police department as a Charter department; (iii) eliminated the existing "complete power" (Section 7.3(a)) of the Mayor over the law enforcement function and (iv) created a new Charter department, the Department of Public Safety and Violence Prevention, which may, or may not, in turn establish a Division of Law Enforcement Services.

The Council Amendment was submitted to the Charter Commission for its review in accordance with Minnesota Statute 410.12 (the "Statute"). The Charter Commission held 2 public hearings and formed a Public Safety Work Group to review the Council Amendment. On August 5, 2020, the Charter Commission advised the Council that additional time was needed for review and that the Charter Commission was extending the period for its review by 90 days in accordance with the Statute. The Work Group continued to meet, conducted its own research and consulted and interviewed the Mayor, multiple Council Members, the Chief of the police department and multiple other employees of the City with expertise and responsibility in providing for public safety.

The Work Group will report back to the full Charter Commission at its November 4 meeting. After hearing the findings and recommendations of the Work Group, the Charter Commission must (i) approve the Council Amendment; (ii) reject the Council Amendment; or (iii) propose a substitute amendment.

For the reasons set forth below, I am proposing that the Work Group consider the attached substitute amendment, which eliminates the minimum funding and staffing requirements in Section 7.3(c) of the Charter but otherwise makes no changes.

2. The funding and staffing minimums in Section 7.3(c) do not belong in the Charter, they are a barrier to change, and their elimination has broad support.

(a) Appropriateness. The Charter's minimum staffing and funding provisions for the police department were not included in the City's original 1920 Charter. They were added by amendment in 1961 after being proposed by the then Council President and passed with the considerable help of the police union.

There are 14 Charter departments (Section 7.2 of the Charter). While the Charter does mandate funding for "adequate" staffing for some departments (for example, the fire department), the Charter does not specify any level of minimum staffing or funding for any department other than the police department. Rather, those decisions are left to the Mayor and the Council in setting the budget and, if the executive and legislative branches so agree, to ordinance.

In my view, minimum funding and staffing specifics do not belong in the Charter and we would not likely include such provisions if we were drafting a Charter from scratch. Indeed this Commission, when drafting the Plain Language Charter, took care to move subjects more appropriate for ordinance out of the Charter entirely and the Council adopted more than 50 ordinances to replace provisions removed from the Charter.

I know that some may prefer to keep the funding and staffing provisions because they are concerned about what our current Council might do in the absence of specific minimum requirements. The remedy for unhappy voters though is not to cover every minute detail of employee staffing in the Charter, the remedy for voters is to elect Council Members who will implement policy that the voters want.

(b) Barrier to change. The current minimum staffing and funding provisions are a barrier to change. Moving some of the functions of the police department to other departments with corresponding adjustments in staffing could run afoul of the Charter. In fact, the City is in litigation over this issue right now. Removing the minimums will eliminate this barrier and leave decisions on staffing and funding to the executive and legislative branches.

(c) Support. The Council Amendment proposes removing the 7.3(c) minimums, and the Mayor told us that he agreed these provisions should go. This was the extent of the consensus between the Mayor and the Council and I think the Charter Commission should recommend that the voters make the final decision.

3. The police department should not be eliminated as a Charter department.

The Council Amendment eliminates the police department as a charter department. While eliminating the Charter status of a department doesn't necessarily mean a department ceases to exist, the fact that the Council Amendment contemplates a **possible** Division of Law Enforcement Services under the Proposed Department of Public Safety and Violence Prevention, demonstrates the Council intent to ultimately eliminate the police department entirely.

Although the Council Amendment only provides that the Department of Public Safety and Violence Prevention **may** have a Division of Law Enforcement Services, most Council Members, either publicly or privately, have acknowledged that a law enforcement function will be required. Indeed, members of the City Attorney's office testified as to the many functions that can only be performed by licensed peace officers (making arrests, serving warrants, carrying a weapon, to name a few). To me, it seems either misleading or like bad drafting to use "may", then with a wink and a nod to say a "must" is what is intended.

So, how will a Division of Law Enforcement Services be different from the police department? Minnesota Supreme Court precedent has established that elimination of a municipal bargaining unit constitutes an unfair labor practice under PELRA. And the City Attorney's office opined that the presumptive bargaining representative of any Division of Law Enforcement Services would be the Police Officers Federation of Minneapolis. So we'll have the same union, the same contract and many of the same officers. Calling them something other than police and changing the color of their uniforms is a transparent sleight of hand that won't fool anyone. We're going to have a significant group of employees performing a law enforcement function. Changing their job title does not move us any closer to reform. We should call them what they are, police officers, and keep the Charter department.

4. Removing the Mayor's "complete power" over the police department is a bad idea.

Section 7.3(a) of the Charter provides that the Mayor has "complete power" over the police department. The Council proposed an amendment in 2018 giving the Council legislative authority over the police (and, confusingly, leaving the Mayor with similar, possibly conflicting authority). The new Council Amendment eliminates the "complete power" language and has the Division of Law Enforcement Services reporting to a department head, the head of the Department of Public Safety and Violence Prevention. The head of the Department of Public Safety and Violence Prevention would be subject to the authority of both the Mayor and the Council.

In 2018, in response to the Council proposal regarding the police department, the Charter Commission researched comparable jurisdictions to determine how police departments are managed by our peer cities. We only looked at mayor/council systems (not city manager or police commission systems). In virtually every instance, mayors have operational control over police departments. This makes practical sense, since police departments respond to emergencies and a clear, unified line of command is important to insure a prompt and appropriate response.

In 2018, in response to a Council request, the City Attorney's office reviewed the Charter authority of the mayor and the Council over the police department and concluded "The City Council has the same authority over the Police Department as it does over all City departments, its authority to legislate and set enterprise policies, goals and strategic direction, hold hearings and require accountability of and reports and information from the Police Department." The City Attorney's office gave substantially the same advice this year when interviewed by the Work Group. The Council apparently disagrees with their own lawyers on this.

It is also concerning to me that the Council Amendment contemplates that the head of the Division of Law Enforcement Services reports to a staff member (the head of the Department of Public Safety and Violence Prevention) and not an elected official. The law enforcement function, whatever it is called, needs to be directly managed by an elected official to insure accountability. In my opinion, it would be a mistake to delegate this to staff.

It is hard for me to see how moving authority from the Mayor to the Council and moving management of the law enforcement function to staff increases accountability or efficiency or advances reform in any meaningful way.

5. Creating a city department to prevent violence does not require Charter change.

I support creating a City department, whatever the name, focused on public safety and violence prevention. This does not require Charter change. The Charter specifically authorizes the Mayor and Council to create departments as they see fit (Section 7.2(a)(15) of the Charter). These departments would not be Charter departments, so would not require the voters to consent to their formation or termination – all that would be up to the Mayor and the Council. A department can always be made a Charter department down the road, if it is successful in accomplishing its goals and mission.

6. Looking at the Charter Commission's standards for considering proposals to amend the Charter.

The Charter Commission recently adopted standards to use in evaluating proposed amendment to the Charter (including this substitute). They are:

(a) Is the amendment germane to the Charter? The substitute amendment I am proposing merely removes existing Charter language. It is clearly germane. In fact, I believe the language being removed is **not** germane to the Charter and is more appropriate for ordinance or policy.

(b) Is the amendment well considered? The substitute amendment incorporates a portion of the Council Amendment and also draws heavily from the substitute proposed earlier by former Commissioner Giraud- Isaacson, who I thank for his hard work. There have been public hearings (on both the Council Amendment and the amendment proposed by Commissioner Giraud-Isaacson) and plenty of opportunity for input during the Work Group's process. The substitute is well considered.

(c) Is the amendment clear and specific? Yes – the clarity and specificity of the substitute amendment are self-evident.

(d) Does the proposed amendment interfere with or take away any rights of voters? If the substitute is approved, the voters would no longer be able to weigh in on the size or funding of the police department. But (i) this is a provision that is more appropriate for ordinance or policy and should never have been included in the Charter in the first place; and (ii) the voters will make this decision for themselves when they vote on the proposed substitute.

(e) Is the proposed amendment consistent with state law? Yes – there is no state law requiring that police staffing and funding be specified in a charter.

(f) Is the proposed amendment necessary to accomplish its intended objective? Yes – see Barrier to Change analysis above (Section 2). While I believe that many of the changes in the Council Amendment **can** be accomplished without Charter change, the changes contemplated by the substitute amendment cannot.

7. Conclusion.

For all the reasons set forth above, I propose the Charter Commission respond to the Council Amendment in a timely fashion with a proposal to substitute with the attached amendment. I look forward to discussing at our meeting on November 2.

DRAFT

Clegg

Amending Article VII of the City Charter relating to Administration pertaining to the Police Department.

§ 7.3. - Police.

- (a) **Police department.** The Mayor has complete power over the establishment, maintenance, and command of the police department. The Mayor may make all rules and regulations and may promulgate and enforce general and special orders necessary to operating the police department. Except where the law vests an appointment in the department itself, the Mayor appoints and may discipline or discharge any employee in the department (subject to the Civil Service Commission's rules, in the case of an employee in the classified service).
- (1) **Police chief.**
 - (A) **Appointment.** The Mayor nominates and the City Council appoints a police chief under section 8.4(b).
 - (B) **Term.** The chief's term is three years.
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 - (D) **Public health.** The chief must execute the City Council's orders relating to the preservation of health.
- (2) **Police officers.** Each peace officer appointed in the police department must be licensed as required by law. Each such licensed officer may exercise any lawful power that a peace officer enjoys at common law or by general or special law, and may execute a warrant anywhere in the county.
- (b) **Temporary police.** The Mayor may, in case of riot or other emergency, appoint any necessary temporary police officer for up to one week. Each such officer must be a licensed peace officer.
- (c) **Funding.** The City Council ~~must fund a police force of at least 0.0017 employees per resident, and provide for those employees' compensation, for which purpose it may tax the taxable property in the City up to 0.3 percent of its value annually~~ to finance the operation of the police department. This tax is in addition to any other tax, and not subject to the maximum set under section 9.3(a)(4).

DRAFT

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